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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 587

JOHN PAUL SHELTON,
Petitioner,

v.

LEROY N. STYNCHCOMBE,
Sheriff of Fulton County,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent prays that the petition for writ of certiorari be denied, for the reasons herein given.

CITATION TO OPINION BELOW

The citations in the petition are correct.

JURISDICTION

The jurisdiction of the court is conceded.

QUESTIONS PRESENTED

I. Whether a Governor's Rendition Warrant in interstate extradition proceedings must under the Fourth Amendment to the United States Constitution as made applicable by the Fourteenth Amendment, or the provi-

sions of 18 U.S.C. § 3182, recite a requisition based on indictment or affidavit.

II. Whether the Georgia procedure in habeas corpus to test the legality of arrest under a Governor's Rendition Warrant in interstate extradition proceedings, as respects burden of proof and burden of evidence, contravenes the Fourteenth Amendment to the United States Constitution by denying due process of law to the petitioner.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the references in the petition, we will from time to time refer to provisions contained in Chapter 44-4, Georgia Code Annotated, which is the Uniform Criminal Extradition Act enacted by the Georgia Legislature in 1951.

STATEMENT OF THE CASE

The statement in the petition, including Appendix 12A is factually correct. We do not agree with the interpretation of the record contained in the first paragraph on page 7 of the petition nor with the conclusion that the Supreme Court of Georgia has denied petitioner any federal rights or immunities, constitutional or statutory.

REASONS FOR NOT GRANTING THE WRIT

I.

Petitioner fails to show conflict between the judgment and decision below and any federal constitutional or statutory provision.

Here we challenge petitioner's major premise.

Article 4, Section 2 of the United States Constitution, and the implementing legislation, 18 U.S.C. § 3182, say

nothing about recitals in a Governor's arrest or rendition warrant. The statute uses the words "shall cause him to be arrested" but that is all.

The Fourth Amendment requires that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and that the "person or things to be seized be particularly described"; otherwise it is silent as to the recitals of a warrant.

The Georgia Code Annotated provides the form of demand for extradition in Section 44-404, and in Section 44-408 provides that the rendition warrant must "substantially recite" the facts necessary to the validity of its issuance.

The *Giordenello* case (357 U.S. 480) cited and relied upon by petitioner, is authority that the Fourth Amendment applies to arrest warrants as well as to search warrants, but it is not in point otherwise, as the question was whether the written and sworn complaint for the issuance of the warrant before the Court set forth sufficient facts to authorize a determination of probable cause. The *Aguilar* case (378 U.S. 108) involved the sufficiency of an affidavit as probable cause for the issuance of a search warrant.

Compton v. Alabama, 214 U.S. 1 turned on the documents which must be submitted to the Governor of the asylum state, before such governor is authorized to issue his warrant (probable cause).

On the other hand this Court has held that the issuance of a rendition warrant is prima facie evidence that the accused is a fugitive from justice and was substantially charged with the commission of a crime (*Illi-*

nois ex rel McNichols v. Pease, 207 U.S. 100; *In re Moyer,* 12 Idaho 250, 85 P. 897, affirmed 203 U.S. 221) regardless of whether these facts are recited in the instrument (*Munsey v. Clough,* 196 U.S. 364).

The conflict between the decision of the Supreme Court of Georgia and the highest courts of the other states referred to by petitioner is more apparent than real, e.g., the Tennessee case cited by petitioner, *State ex rel Sivley v. Hackett,* 161 Tenn. 602, 33 S.W. 2d 422, contains in the quotation at pp. 12, 13 of the petition a statement that documents accompanying the warrant can be looked to in amplification of the recitals in the warrant. A Florida District Court of Appeal in *Kelly v. State ex rel Rosenthal,* 149 So. 2d 85, indicated that annexed documents might cure deficiencies in a Governor's rendition warrant. Of this more later.

It appears that at least five other states are in harmony with Georgia in the matter of recitals. They are: Connecticut (*Ross v. Crofutt,* 84 Conn. 370, 80 A. 90); Louisiana (*State ex rel. Burnett v. Flournoy,* 136 La. 852, 67 So. 929); Massachusetts (*Com. v. Hall,* 9 Gray 262, 69 Am.Dec. 285); Mississippi (*Ex Parte Devine,* 74 Miss. 715, 22 So. 3); South Carolina (*Ex Parte Murray,* 112 S.C. 342, 99 S.E. 798). The rationale is that there is no constitutional or statutory provision requiring particular recitals.

We do not accept the proposition advanced by petitioner that the writ will be granted in cases of conflict between state courts of last resort, but have set out the foregoing to show that Georgia is not alone. We note petitioner cites no authority for this proposition. None has come to our attention.

The warrant states the charges and the nature of the proceedings, and is sufficient as notice to the person named. It is not a pleading.

II.

Georgia procedure, as respects burden of proof and burden of producing evidence on habeas corpus hearings in extradition cases, does not deny due process to the petitioner.

Here we question petitioner's minor premise.

In the decision below, the Court held that the Governor's warrant, absent any other evidence, on a habeas corpus hearing, made the detention prima facie legal.

However, under the decisions of the Supreme Court of Georgia, the entire extradition proceedings must accompany the warrant. In *McFarlin v. Shirley,* 209 Ga. 794, 76 S.E. 2d 251, the Court held that when respondent at the habeas corpus hearing introduced a rendition warrant of the Governor of Georgia and a document denominated a requisition, but failed to introduce any copy of an indictment or affidavit properly certified charging crime in the demanding State, the prima facie showing made by the warrant was defeated and the petitioner entitled to discharge. In *West v. Graham,* 211 Ga. 662, 87 S.E. 2d 849, the respondent sheriff introduced a Governor's rendition warrant and testified to the effect that while he had other relevant documents in his possession, he had neither a formal demand for the rendition of the prisoner nor a copy of an indictment or an affidavit made before a magistrate, it was held error to remand the prisoner. In *Brown v. Grimes,* 214 Ga. 388, 104 S.E. 2d 907, the respondent introduced the warrant, the petitioner the supporting documents, and the Supreme

Court of Georgia held that the judgment remanding petitioner was error since the supporting documents failed to show that a crime was committed in the demanding State, and because the supporting documents contained no formal demand or requisition upon the Governor of Georgia by the Governor of the demanding State.

Section 44-411, Georgia Code Annotated, from the Uniform Act, provides that a person arrested upon a Governor's rendition warrant shall "be taken forthwith" before a judge of a court of record, who "shall inform him of the demand made for his surrender and of the crime with which he is charged." The judge is also required to advise of the right of the arrested person by habeas corpus to test the legality of the arrest and to grant the arrested person a reasonable time to apply for the writ. This provision, in the light of the cases cited above, has had the effect of causing the entire extradition proceedings to accompany the Governor's rendition warrant. The judge could, under these cases, refuse to commit the arrested person to custody on a warrant standing alone; he could also direct the preparation of an application for the writ and set its hearing instanter, and discharge for want of a requisition or a charge of crime by way of indictment or affidavit.

We have no doubt that should the Governor not forward or refuse to forward any supporting documents with the warrant, so that the person arrested could examine them, not only for information but minutely for legal sufficiency, our courts would follow the suggestion of the South Carolina Court in *Ex Parte Murray*, already cited, (99 S.E. 798 at p. 800), and hold the warrant insufficient. No other conclusion can be reached

from the three decisions of the Supreme Court of Georgia, cited above.

Reference to the record (Exhibit 12A, petition, R. 52 et seq.) shows that counsel for respondent offered what he referred to as "the entire extradition proceedings . . . consisting of first the Governor's warrant" on the hearing of the habeas corpus in this case. He later referred to as being among the proceedings an information (good in Georgia to support a requisition, *Deering v. Mount*, 204 Ga. 872, 52 S.E. 2d 596) (petition 13A, R. 55) and "the request by the Governor of Michigan for the extradition of Mr. Shelton" (petition 15A, R. 57).

Petitioner could have introduced these other documents and taken advantage of any deficiencies. In this connection it is to be noted that petitioner did not allege that the Governor of Georgia did not have before him all necessary documents when he issued his warrant, but only attacked the warrant on its face; in other words, his complaints do not go behind the warrant. As a matter of fact, the record will disclose that the principal issue on the habeas corpus hearing was identity.

It is said in 31 Am.Jur.2d., Extradition, § 61, at page 967, that "a failure to set out a particular recital (in a rendition warrant) may be cured by including with the return of the sheriff, or producing on a hearing of habeas corpus proceedings, the papers on which the warrant was issued, which show on their face that they are in due and proper form." As authority, the following are cited: *United States ex rel. Hackler v. Sain,* (CA 7 Ill.) 287 F.2d 286, cert. den. 368 U.S. 836; *People ex rel. Hackler v. Lohman,* 17 Ill. 2d 78, 160 N.E. 2d 792, cert. den. 361

U.S. 963; *State ex rel. Sivley v. Hackett,* 161 Tenn. 602, 33 S.W. 2d 422.

State of South Carolina v. Bailey, 289 U.S. 412, appears to be authority for the Georgia procedure as respects burden of proof or of going forward with evidence. In that case it is pointed out that a hearing on a habeas corpus proceeding for release from custody under an extradition warrant is not a criminal trial, and it was held that petitioner should have testified.

The Court has recently held in *Smith v. California,* 361 U.S. 147, that the States generally may regulate allocation of burden of proof in their courts. In *Speiser v. Randall,* 357 U.S. 513, at 523, it is said "It is of course within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion "unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts,* 291 U.S. 97, 105.

Certainly the Georgia procedure shown in the cases cited places no onerous burden on one arrested on a Governor's rendition warrant, in habeas corpus proceedings to test the legality of the proceedings. Indeed, the respondent must have on hand for production at the hearing all documents required by law to make the action of the Governor legal, else the petitioner is entitled to discharge. Clearly we have no denial of procedural due process, hence no Fourteenth Amendment question.

The decision of the Supreme Court of Georgia rests

on the presumption that the Governor complied with the Constitution and law in issuing his rendition warrant. Since interstate extradition has for its very foundation the presumption that Governors of asylum states will perform their duty to extradite fugitives (cf. *Drew v. Thaw,* 235 U.S. 432, holding that there is no power, state or federal, to compel a governor to do so) it should not be surprising that a court has thought fit to indulge a presumption in favor of the acts of a Governor who is performing this duty.

CONCLUSION

For the foregoing reasons, Respondent urges this Court to decline to issue the writ of certiorari in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

GEORGIA, FULTON COUNTY

I, Carter Goode, of counsel for Leroy N. Stynchcombe, Sheriff of Fulton County, respondent in the foregoing case, certify that I have this day served copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari upon Petitioner, by depositing in the United States Post Office in Atlanta, Georgia, two copies of same in an envelope addressed to James L. Mayson, Attorney, 325 Atlanta National Building, Atlanta, Georgia, counsel of record for petitioner, with sufficient first class postage affixed thereto.

This January ....., 1969.

CARTER GOODE
Assistant District Attorney
Atlanta Judicial Circuit